

1
2
3
4
5
6
7
8 HONORABLE ROBERT S. LASNIK
9

10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON

12 RAJESH NAHAR and THIRUKUMARAN
13 VELAYUDHAN, Derivatively on Behalf of
14 Nominal Defendant, CTI BIOPHARMA
15 CORP.,

Plaintiff,

v.

16 JAMES A. BIANCO, LOUIS A. BIANCO,
17 BRUCE J. SEELEY, JACK W. SINGER,
18 PHILLIP M. NUDELMAN, JOHN H.
19 BAUER, KAREN IGNAGNI, RICHARD L.
20 LOVE, MARY O. MUNDINGER,
21 FREDERICK W. TELLING and REED V.
22 TUCKSON,

Defendants,

and

23 CTI BIOPHARMA CORP.,

24 Nominal Defendant

25 JAMES T. HILL, Derivatively on Behalf of
26 Nominal Defendant, CTI BIOPHARMA
CORP.,

Plaintiff,

v.

JAMES A. BIANCO, LOUIS A. BIANCO,

No. 2:16-cv-00756RSL

STIPULATED MOTION AND ORDER TO
CONSOLIDATE RELATED CASES AND
APPOINT LEAD COUNSEL

No. 2:16-cv-01250RSL

27 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
28 2:16-cv-00756 / 2:16-cv-01250] – Page 1

PHILLIP M. NUDELMAN, JOHN H.
BAUER, KAREN IGNAGNI, RICHARD L.
LOVE, MARY O. MUNDINGER,
FREDERICK W. TELLING and REED V.
TUCKSON,

Defendants,

and

CTI BIOPHARMA CORP.

Nominal Defendant

IT IS HEREBY STIPULATED by and between Plaintiffs Rajesh Nahar, Thirukumaran Velayudhan and James T. Hill (“Plaintiffs”), Defendants James A. Bianco, Louis A. Bianco, Bruce J. Seeley, Jack W. Singer, Phillip M. Nudelman, John H. Bauer, Karen Ignagni, Richard L. Love, Mary O. Mundinger, Frederick W. Telling, Reed V. Tuckson, and, and Nominal Defendant CTI BioPharma Corp. (“Defendants,” and together with Plaintiffs, the “Parties”), the parties to *Rajesh Nahar, et al v. James A. Bianco, et al.*, No. 2:16-cv-00756 (RSL) and *James T. Hill v. James A. Bianco, et al.*, No. 2:16-cv-01250 (RSL) (the “Actions”), by and through their respective counsel of record and subject to the approval of the Court, in order to facilitate the efficient prosecution of the Actions, as follows: pursuant to LCR 10 and 7(d)(1), Plaintiffs move the Court to enter an order consolidating the Actions under the caption of the first filed case, namely *Rajesh Nahar, et al v. James A. Bianco, et al.*, No. 2:16-cv-00756 (RSL) (“*Nahar Action*”) and to appoint interim lead counsel for the Plaintiffs to assist with the orderly prosecution of the Actions.

I. CONSOLIDATION OF CASES

STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos. 2:16-cv-00756 / 2:16-cv-01250] – Page 2

1 1. The *Nahar Action* is presently stayed (Dkt. No. 11) pursuant to a prior stipulation
2 among the Parties to that Action, but the Parties now hereby stipulate that the stay should be
3 temporarily lifted to allow for the procedural relief set forth herein.
4

5 2. The Parties have met and conferred pursuant to LCR 42 and agree pursuant to
6 LCR 42(b) that the Actions are shareholder derivative actions that involve common questions of
7 law or fact, and that the Parties should stipulate to the consolidation of the Actions to avoid
8 unnecessary costs or delay and to assure consistent rulings and decisions. Therefore, pursuant to
9 LCR 42 and Federal Rule of Civil Procedure 42, the Parties agree that the Actions should be
10 consolidated for all purposes as set forth herein. Hereinafter, papers need only be filed in the
11 Consolidated Action, as set forth below. This Order shall govern and control the procedure for
12 the litigation of each of the Actions and all related shareholder derivative cases that may be filed
13 in or transferred to this Court.
14

15 3. The Parties agree that the files of the Actions shall be maintained by the clerk in
16 the *Rajesh Nahar, et al v. James A. Bianco, et al.*, No. 2:16-cv-00756 action (the “Consolidated
17 Action”). Every pleading filed in the Actions shall bear the following caption:
18

19 In re CTI BIOPHARMA SHAREHOLDER
20 DERIVATIVE ACTION

NO. 2:16-CV-00756 RSL

Consolidated with No. 2:16-CV-01250 RSL

21 4. Defendants agree that their counsel shall be deemed to have accepted service of
22 the complaint in each of the Actions as of the date of this stipulation. Defendants reserve all
23 defenses and objections except as to sufficiency of service.
24

25
26 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
2:16-cv-00756 / 2:16-cv-01250] – Page 3

1 5. Plaintiffs hereby designate the Complaint filed by Plaintiff Hill in the action
2 *James T. Hill v. James A. Bianco, et al.*, No. 2:16-cv-01250 (RSL) as the current operative
3 complaint in the Consolidated Action.

4 **II. ORGANIZATION OF PLAINTIFFS AND PLAINTIFFS' COUNSEL**

5 6. Counsel for the Plaintiffs hereby agree that Faruqi & Faruqi, LLP and Gainey
6 McKenna & Egleston shall serve as Co-Lead Counsel and Terrell Marshall Law Group and Lee
7 & Lee, PS as Co-Liaison Counsel for Plaintiffs in the Consolidated Action and all other related
8 actions that have been filed in or transferred to this court. Defendants take no position on the
9 Plaintiffs' internal organization of the Actions.

10 7. The Parties agree that Defendants' counsel may rely upon all agreements made
11 with Co-Lead Counsel for Plaintiffs, or other duly authorized representative of Co-Lead Counsel
12 for Plaintiffs, and such agreements shall be binding on all Plaintiffs.

13 8. The Parties agree that Co-Lead Counsel for Plaintiffs shall have authority to speak
14 for Plaintiffs in matters regarding pre-trial procedure, trial, and settlement negotiations, and shall
15 make all work assignments in such manner as to facilitate the orderly and efficient prosecution of
16 this litigation and to avoid duplication or unproductive effort.

17 9. The Parties agree that Co-Lead Counsel for Plaintiffs shall be responsible for
18 coordinating all activities and appearances on behalf of Plaintiffs and for the dissemination of
19 notices and orders of this court. No motion, request for discovery, or other pre-trial or trial
20 proceedings shall be initiated or filed by any Plaintiffs except at the behest of Co-Lead Counsel
21 for Plaintiffs.

22
23
24
25
26 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
2:16-cv-00756 / 2:16-cv-01250] – Page 4

1 10. The Parties agree that the responsibility of Co-Lead Counsel for Plaintiffs will
 2 include controlling and overseeing the prosecution of the Consolidated Action and other related
 3 actions. Co-Lead Counsel for Plaintiffs shall have the responsibility for:

- 4 a. Determining the position of the Plaintiffs on matters arising during the
 5 pre-trial proceedings, and presenting such positions to the Court and opposing parties in
 6 pleadings, briefs, oral arguments, or in such other fashion as may be appropriate, and
 7 allocating work in that regard while achieving efficiency and avoiding duplication;
- 8 b. Coordinating the litigation and conducting discovery on behalf of the
 9 Plaintiffs, including, *inter alia*, the preparation of joint interrogatories, requests for
 10 production of documents, and examination of witnesses in depositions;
- 11 c. Initiating or conducting settlement negotiations on behalf of the Plaintiffs,
 12 and entering into settlement agreements on behalf of the Plaintiffs, subject to Court
 13 approval;
- 14 d. Trial preparation and trial; and
- 15 e. Consistent with Court orders, allocating any judicially-approved fees and
 16 costs among Lead Counsel and other counsel for Plaintiffs upon resolution of the case.

17 **III. LATER FILED CASES**

18 11. The Parties agree that unless otherwise ordered by the Court, the terms of this
 19 Stipulation, including pre-trial consolidation, shall apply to shareholder derivative actions later
 20 instituted in, or transferred to, this Court that involve similar or related claims, or that are
 21 otherwise deemed related to this Consolidated Action. The Parties agree that when a shareholder
 22 derivative action that properly belongs as part of this Consolidated Action is hereinafter filed in
 23
 24 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
 25 2:16-cv-00756 / 2:16-cv-01250] – Page 5

1 this Court or transferred to this Court, Co-Lead Counsel for Plaintiffs shall serve and file an
 2 endorsed copy of this Order upon attorneys for plaintiff in the newly-filed or transferred action.
 3 The Parties agree that Co-Lead Counsel for Plaintiffs shall also advise the attorneys for any
 4 plaintiff in any such newly-filed or transferred shareholder derivative action that those attorneys
 5 must serve a copy of this Order on any new defendant(s) and file proof of service of this pre-trial
 6 Order with the Court. The Parties agree that any objections to consolidation or application of the
 7 other terms of this Order to the newly filed shareholder derivative case shall be filed with the
 8 Court promptly, with a copy served on Co-Lead Counsel for Plaintiffs and counsel for
 9 Defendants. Unless otherwise ordered by the Court, the Parties agree that the terms of all orders,
 10 rulings, and decisions shall apply to all later related shareholder derivative actions instituted
 11 herein.
 12

13 **IV. TEMPORARY STAY PENDING MOTION TO DISMISS IN THE RELATED
 14 SECURITIES CLASS ACTION**

15 12. The Parties agree that the Consolidated Action (including all discovery) shall be
 16 stayed until 30 days after the entry of any order(s) denying any part of any motion to dismiss in
 17 the related securities class action pending in the United States District Court for the Western
 18 District of Washington, captioned *IN RE CTI BIOPHARMA CORP. SECURITIES LITIGATION*,
 19 No. C16-cv-00216 (RSL) (“Securities Class Action”), or a final order dismissing the Securities
 20 Class Action with prejudice, as the stay will promote the efficient and orderly administration of
 21 justice by coordinating the Consolidated Action with the Securities Class Action.
 22

23 13. The Parties agree that if the stay of proceedings is lifted, the Parties shall meet
 24 and confer and submit a proposed scheduling order governing further proceedings in the
 25
 26 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
 2:16-cv-00756 / 2:16-cv-01250] – Page 6

1 Consolidated Action, including the date by which Defendants must answer or otherwise plead,
2 and the date and time for a case management conference.

3 14. The Parties agree unless otherwise ordered by the Court that all hearings or
4 conferences currently scheduled shall be postponed until the date and time that will be specified
5 in the proposed scheduling order to be submitted by the Parties.

6 15. The Parties agree that prior to the production of any documents by Defendants to
7 Plaintiffs, the Parties shall enter into a confidentiality agreement and/or a protective order.

8 16. The Parties shall notify each other of any related derivative lawsuits that they
9 become aware of.

10 17. The Parties agree that if the plaintiff in any related derivative lawsuit refuses to
11 agree to a stay under similar terms, Plaintiffs may lift the agreed stay upon 30-days' notice in
12 writing.

13 18. The Parties agree that during the pendency of this stay, Defendants shall include
14 Plaintiffs in any mediation with the plaintiffs in the Securities Class Action and shall include
15 Plaintiffs in any mediation with any purported plaintiff in any related derivative lawsuit or any
16 other related proceeding.

17 19. The Parties agree that notwithstanding this stay of the Consolidated Action,
18 Plaintiffs may file an amended complaint.

19 IT IS SO STIPULATED.

20 Dated this 4th day of November, 2016.

21 Respectfully submitted,

22 **TERRELL MARSHALL LAW GROUP**

23 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
24 2:16-cv-00756 / 2:16-cv-01250] – Page 7

By: /s/ Beth E. Terrell
Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

FARUQI & FARUQI, LLP

By: /s/ *Stuart J. Guber*
Stuart J. Guber, Esq.
Email: sguber@faruqilaw.com
101 Greenwood Avenue, Suite 600
Jenkintown, Pennsylvania 19046
Telephone: (215) 277-5770
Facsimile: (215) 277-5771

Counsel for Plaintiffs Nahar and Velayudhan

- And -

LEE & LEE, PS

By: /s/ Bethany C. Mito
Bethany Mito – WSBA # 42918
bethany.lee@leeandleelaw.com
1001 4th Ave., Suite 4368
Seattle, WA 98154
Telephone: (206) 458-6986
Facsimile: (206) 458-6816

GAINY McKENNA & EGLESTON

By: /s/Thomas J. McKenna
Thomas J. McKenna – NYBA #2009546
tjmckenna@gme-law.com
440 Park Avenue South, 5th Floor
New York, NY 10016
Telephone: (212) 983-1300
Facsimile: (212) 983-0383

Counsel for Plaintiff Hill

STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos. 2:16-cv-00756 / 2:16-cv-01250] – Page 8

Lee & Lee, PS
1001 Fourth Avenue., Ste. 4368
Seattle, WA 98154
T: 206-458-6986

Gainey McKenna & Egleston
440 Park Avenue South, 5th Floor
New York, NY 10016
T: 212-983-1300

1 - And -
2

3 **DAVIS WRIGHT TREMAINE LLP**
4

5 By: /s/ Brendan T. Mangan
6 Brendan T. Mangan, WSBA #17231
7 1201 Third Avenue, Suite 2200
8 Seattle, WA 98101
9 Telephone: (206) 622-3150
10 Facsimile: (206) 757-7700
11 Email: brendanmangan@dwt.com

12 **O'MELVENY & MYERS LLP**
13

14 By: /s/ Jeffrey Kilduff
15 Jeffrey Kilduff
16 1625 Eye Street NW
17 Washington, D.C. 20006
18 Telephone: (202) 383-5300
19 Facsimile: (202) 383-5414
20 Email: jkilduff@omm.com

21 *Attorneys for Defendants and Nominal Defendant*

22 IT IS SO ORDERED:
23

24 Dated: November 8, 2016.
25

26 
27 Robert S. Lasnik
28 United States District Judge

29 STIPULATED MOTION AND ORDER TO CONSOLIDATE AND APPOINT LEAD COUNSEL [CASE Nos.
30 2:16-cv-00756 / 2:16-cv-01250] – Page 9